S T A T E O F M I C H I G A N

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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| In the matter of the application of<br>**DTE GAS COMPANY**<br>for a gas cost recovery reconciliation proceeding<br>for the 12-month period ended March 31, 2015. | )<br>)<br>)<br>)<br>) | Case No. U-17332-R |

At the May 31, 2017 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

# ORDER

## History of Proceedings

On June 29, 2015, DTE Gas Company (DTE Gas) filed an application, with supporting testimony and exhibits, seeking authority to reconcile its gas cost recovery (GCR) revenues and expenses for the 12-month period ended March 31, 2015, pursuant to 1982 PA 304 (Act 304). On September 3, 2015, Administrative Law Judge Sharon L. Feldman (ALJ) held a prehearing conference, and granted intervenor status to the Michigan Department of the Attorney General (Attorney General). The Commission Staff (Staff) also participated in the proceedings. The ALJ held a second prehearing conference on April 25, 2016, to accommodate DTE Gas's filing of revised testimony.

An evidentiary hearing was held on December 7, 2016. The parties filed briefs on January 12, 2017, and reply briefs on February 3, 2017. The ALJ issued her Proposal for Decision (PFD) on

March 20, 2017. The Attorney General filed exceptions on April 12, 2017, and DTE Gas filed replies to exceptions on April 26, 2017. The record in this case consists of 281 pages of testimony and 47 exhibits admitted into evidence. The record also includes portions of testimony given in prior dockets to which the ALJ took official notice by agreement of the parties.[1]

Proposal for Decision

The ALJ provided a detailed explanation of the testimony and positions of the parties on pages 3-23 of the PFD, which will not be repeated here. In the PFD, the ALJ clarified that the only areas of dispute that require resolution in this case are: (1) the Staff's adjustments to the reconciliation calculations; (2) classification of ANR contract costs; (3) proper allocation of capacity release credits that DTE Gas received in administering the ANR-Alpena contract; and (4) the Attorney General's requested disallowance for approximately $1.6 million spent during the GCR year on parking service to address the deliverability issue that arose in the 2013/2014 GCR year. No party took exception to the PFD's recommendations regarding issues (1) and (3), i.e., the Staff's adjustments to the reconciliation calculations or the proper allocation of capacity release credits that DTE Gas received in administering the ANR-Alpena contract. The Commission finds the PFD's findings and conclusions regarding those issues to be well-reasoned and adopts the PFD's findings, analysis, and conclusions on those issues. The two remaining contested issues are discussed below.

[1] The testimony and filings that the ALJ took official notice of from prior dockets are described on page 2 of the PFD.

Discussion

Classification of ANR Contract Costs

The ALJ first considered the Attorney General's argument that the Commission should disallow $972,626 of ANR-Alpena contract costs from the total GCR costs that DTE Gas proposed and further instruct DTE Gas that these costs should be excluded and are not recoverable in any future GCR plan or reconciliation proceeding. The ALJ summarized the positions of the parties in the PFD. PFD, pp. 21-23. The Attorney General argued that the issue presented in this case is similar to the one presented in Case No. U-17131-R. In Case No. U-17131-R, the Commission concluded that DTE Gas's ANR contract costs could not be reclassified from costs properly recoverable in base rates, to the booked cost of gas sold, based on the language of the original and amended contracts at issue in that proceeding. The Attorney General argued that the amended contracts at issue in the present case have the same "nature and function" as the contracts at issue in Case No. U-17131-R, and therefore, the contract costs at issue here cannot properly be classified as costs for gas supply recoverable in this GCR reconciliation case. PFD, p. 22; Attorney General's initial brief, pp. 6-8. The crux of the Attorney General's argument is that the transportation contract at issue serves an integration function and that amending the contract to add greater deliverability does not change the nature and function of the contract. *Id*., p. 8. The Attorney General further argued that DTE Gas admitted that $870,704 of the costs are attributable to the transportation reservation charge and that only $101,923 is attributable to transport commodity charges. Thus, even assuming the $101,923 of transport commodity charges is different in nature and function than the original contract, a disallowance of $870,704 is still appropriate for the transportation reservation charge. *Id*., p. 9. The Attorney General urged the Commission to remove the $972,626 of ANR-Alpena costs from the total GCR plan costs that

DTE Gas proposed and require DTE Gas to recover those costs in base rates as the Commission ordered in Case No. U-16999.

DTE Gas argued that the Commission resolved this issue in its November 22, 2016 order in Case No. U-17691 (November 22 order), in which the Commission adopted the reasoning and recommendation of the ALJ that DTE Gas's cost allocation of the costs associated with the ANR-Alpena contract was reasonable, supported by the record, and necessary to avoid double recovery. According to DTE Gas, the doctrine of collateral estoppel bars relitigation of this issue absent new evidence or a change in circumstances warranting a different result. *See*, November 22 order, pp. 34-35; DTE Gas's initial brief, pp. 30-34. The utility further argued that its proposed cost allocation is consistent with the settlement agreement the Commission approved in Case No. U-16999. DTE Gas explained in its initial brief that the Commission's decision in Case No. U-16999 centered on contractual language in the settlement agreement that limited the scope of its decision to the ANR-Alpena contract in existence at the time the settlement agreement was executed, and not to any and all subsequent contracts that would come later. Thus, the utility argued that principles of contract interpretation applied to the settlement agreement the Commission approved in Case No. U-16999 limit the approval to the settlement agreement and ANR-Alpena contract in existence discussed in that case. *See*, DTE Gas's initial brief, pp. 34-36. Finally, DTE Gas argued that the evidentiary record supports rejection of the Attorney General's proposed disallowance.

The ALJ recommended that the Commission reject the Attorney General's proposed disallowance. In reaching this conclusion, the ALJ first reviewed the Commission's December 20, 2012 order in Case No. U-16999 (December 20 order) that approved a partial settlement agreement permitting DTE Gas to recover as operations and maintenance (O&M) expense the transportation costs associated with the ANR transportation agreement in effect at that time (Contract No. 117623) used to serve the company's Alpena market. The ALJ also considered the Attorney General's argument that the Commission should be bound by its January 12, 2017 order in Case No. U-17131-R (January 12 order), which found that the ANR-Alpena contract costs at issue in that case were properly characterized as O&M costs based on the settlement agreement in Case No. U-16999. Next, the ALJ considered DTE Gas's argument that a second contract (Contract No. 122065), which was executed with ANR subsequent to their execution of Contract No. 117623, significantly increased capacity and is no longer used solely to transmit system gas to Alpena, but is also used to obtain system supply. The ALJ further noted that, DTE Gas, in disputing the Attorney General's reliance on the January 12 order in Case No. U-17131-R, pointed instead to the Commission's November 22 order in Case No. U-17691 that addressed recovery of the costs associated with Contract No. 122605 and approved DTE Gas's proposed allocation of the capacity and commodity costs of this contract between O&M and GCR costs. Next, the ALJ referenced the Attorney General's argument in his reply brief that the decision in this case should be based on this record and that previous Commission decisions are not binding on the Commission in this case.

In reaching a conclusion on the issue, the ALJ acknowledged that the case should be decided on this record, but likewise opined that it is important to recognize the Commission's past interpretation of this proposed allocation in the December 20 order in Case No. U-16999. Agreeing with DTE Gas's legal analysis regarding the reach and scope of collateral estoppel in Commission decisions, the ALJ found that the Attorney General failed to present any information in this record that would change the Commission's interpretation of this issue. More specifically, the ALJ reasoned as follows:

> While the Commission is not required to strictly adhere to preclusion doctrines such as res judicata and collateral estoppel, the Attorney General's request that the Commission reach a different conclusion in this case, regarding the interpretation of the same settlement agreement and the same ANR-Alpena contract, should at a minimum meet the Commission-articulated standards for reconsideration of that decision, and identify new evidence that was not available to the Commission, or other change in circumstance that would justify a different result. [PFD, p. 29, footnote omitted.]

Because the ALJ found that the Attorney General failed to present any new evidence or a change in circumstance that would warrant a different conclusion than the Commission's earlier interpretation on this issue, the ALJ concluded that it is appropriate for the Commission to allocate pipeline capacity reservation costs and volumetric transportation costs as DTE Gas has allocated them, with the exception of capacity release credits discussed elsewhere in the PFD. PFD, pp. 29-30.

The Attorney General takes exception to the PFD's recommendation to approve DTE Gas's cost allocation. In doing so, he makes the same arguments that he made in his initial brief on this issue. He urges the Commission to reach the same conclusion that it reached in its January 12 order in Case No. U-17131-R where the Commission disallowed the recovery of $35,069 of ANR-Alpena contract costs that DTE Gas sought to recover as GCR costs. The Attorney General argues that the "nature and function" of the contract at issue in this case has not changed since the Commission issued its January 12 order in Case No. U-17131-R. The Attorney General further asserts that, because the ANR contract at issue in other GCR proceedings, Contract No. 122605, does not specify a secondary delivery point, the secondary delivery service being charged to the GCR cost of gas is DTE Gas's "attempt to shift recovery of costs to the GCR reconciliation and to obfuscate the true nature of the ANR-Alpena transportation service." Attorney General's exceptions, p. 6. Again, the Attorney General asserts that the transportation contract in question serves an integration function and that simply amending the contract to add greater deliverability does not change the nature and function of the contract. *Id.*, p. 8. Because the contract serves the purpose of integrating DTE Gas's system, the Attorney General argues that the fact that DTE Gas can think of additional functions such as gas supply is inconsequential. The Attorney General also points out that DTE Gas admitted that $870,704 is attributable to the transportation reservation charge and that only $101,923 is attributable to transport commodity charges. Thus, he argues that, at a minimum, a disallowance of $870,704 is appropriate for the transportation reservation charge. The Attorney General therefore requests that the Commission remove $972,626 of the ANR-Alpena costs from the total GCR costs proposed by DTE and require DTE to recover them in base rates instead as the Commission ordered in Case No. U-16999.

In reply, DTE Gas repeats the arguments made in its reply brief during initial briefing.

The Commission, having considered the parties' arguments, the evidentiary record, and the ALJ's reasoning, findings, and conclusions of law, rejects the Attorney General's proposed disallowance. In contrast to some of the reasoning provided in the PFD, the Commission does not agree that the December 20 order in Case No. U-16999 decides this issue. First, the Commission's approval of the partial settlement agreement in the December 20 order in Case No. U-16999 approved Contract No. 117623, an ANR-Alpena contract not in existence today. The Commission's approval of that transportation agreement is, as DTE Gas argues, limited in time and application to the contract in existence before it, which has since expired. There is no binding precedential effect of the Commission's decision in the December 20 order that resolves the cost allocation issue presented here. The language of the partial settlement agreement approved in the December 20 order was limited to Contract No. 117623, the contract that existed when the agreement was executed, and there is nothing that the Commission decided in approving that partial settlement agreement that can be imputed as a "policy interpretation" that decides the cost allocation issue presented here. In approving that partial settlement agreement, the Commission did not articulate a longstanding policy or interpretation to be used in future Commission decisions. The parties did agree that DTE Gas would take a position in future GCR reconciliation proceedings that prevents double recovery of the ANR transportation expense that was the subject of the now-expired transportation agreement in place when they entered the agreement. However, this should not be interpreted as a Commission preference for one method of cost allocation over another in future proceedings. Accordingly, the Commission finds that the December 20 order in Case No. U-16999 is not particularly relevant or dispositive in deciding this issue.

Turning to the arguments of both the Attorney General and DTE Gas regarding the application of collateral estoppel to this issue based on the Commission's earlier orders in Case Nos. U-17131-R and U-17691, the Commission agrees with DTE Gas that the Commission's November 22, 2016 order in Case No. U-17691 bars relitigation of DTE Gas's proposed cost allocation absent a presentation of new evidence or a change in circumstance that renders the application of the Commission's decision in that order unreasonable here. The doctrine of collateral estoppel applies to "unappealed administrative determinations *that are adjudicatory in nature* and where ... a method of appeal is provided." *Consumers Energy Co v Pub Serv Comm*, 268 Mich App 171, 177; 707 NW2d 633 (2005), quoting *Champion's Auto Ferry v Pub Serv Comm*, 231 Mich App 699, 712; 588 NW2d 153 (1998) (emphasis added).

"Collateral estoppel bars relitigation of an issue in a new action arising between the same parties or their privies when the earlier proceeding resulted in a valid final judgment and the issue in question was actually and necessarily determined in that prior proceeding." *In re Consumers Energy Application For Rate Increase*, 291 Mich App 106, 122; 804 NW2d 574, 584 (2010), quoting *Leahy v Orion Twp*, 269 Mich App 527, 530, 711 NW2d 438 (2006), citing 1 Restatement Judgments, 2d, § 27, p. 250. In *Pennwalt Corp v Pub Serv Comm*, 166 Mich App 1, 7–9; 420 NW2d 156 (1988), the Michigan Court of Appeals determined that the doctrines of *res judicata* and collateral estoppel were inapplicable to the fixing and regulating of rates by the Commission because this is a legislative function, not a judicial one. *See*, *Consumers Energy Co v Michigan Pub Serv Comm*, *supra*, 268 Mich App 177. "Even so, issues fully decided in earlier PSC proceedings need not be 'completely relitigated' in later proceedings unless the party wishing to do so establishes by new evidence or a showing of changed circumstances that the earlier result is unreasonable." *In re Consumers Energy Application For Rate Increase*, 291 Mich App 106, 122; 804 NW2d 574, 584 (2010), citing *Pennwalt*, *supra.*

In the Commission's November 22, 2016 order in Case No. U-17691, the Commission addressed DTE Gas's claim that costs associated with system integration capacity are recoverable through base rates and that costs attributable to the system supply capacity are recoverable through GCR. The very same parties presented the very same arguments. The issue was litigated and the Commission reached a final decision on it. The Commission adopted the reasoning and conclusions of the ALJ, set forth in the PFD. There, the ALJ accepted the distinction between costs related to system supply capacity and costs attributed to system integration capacity. The Commission agrees with DTE Gas that, although the contract at issue in Case No. U-17691 was for a different time period than the contract at issue here, the contracts are otherwise the same with regard to the law and the relevant facts. The Commission therefore finds that the issue presented here meets the criteria for the application of collateral estoppel. The Commission further agrees with DTE Gas that the Attorney General has not presented new evidence or a showing of changed circumstances that would make the application of the Commission's decision in its November 22 order in Case No. U-17691 unreasonable here.

In contrast, the Commission rejects the Attorney General's argument that the Commission should find its June 9, 2016 order in Case No. U-17131-R to be dispositive on this issue, because the Commission agrees with DTE Gas that there are factual differences between that case and this one that render it distinguishable. There, the contract at issue was Contract No. 117623, as amended, and the parties *did not* agree in that contract to add 30,000 dekatherms per day (Dth/day) of summer capacity. Further, what led the Commission to disallow the requested GCR costs in Case No. U-17131-R was its conclusion that the ALJ had properly determined that the Commission's earlier determination in its December 20 order in Case No. U-16999 that the costs were to be recovered in base rates applied both to Contract No. 117623, the contract at issue in Case No. U-16999, and the amended version of Contract No. 117623 at issue in Case No. U-17131-R, because both could be appropriately characterized as "the ANR transportation agreement used to serve the Company's Alpena market." *See,* Commission's June 9, 2016 order in Case No. U-17131-R, pp. 14-15. As DTE Gas points out, Contract No. 117623 expired and was subsequently replaced by Contract No. 122065, which became effective January 1, 2014. DTE Gas correctly asserts that Contract No. 122065 added 30,000 Dth/day of summer capacity. So, the costs related to increased gas supply under the ANR contract that are the subject of this proceeding *were not incurred* during the GCR plan year governing the Commission's June 9, 2016 order Case No. U-17131-R, but they were incurred in Case No. U-17691 just as they are in this proceeding. Further, the Commission, in its January 12, 2017 order denying rehearing in Case No. U-17131-R, emphasized that its decision in its June 9, 2016 order was based on the contracts in evidence before it, and was never intended to govern future transportation agreements not a part of that record.  So, the Commission's June 9, 2016 order and its subsequent January 12, 2017 order denying rehearing in Case No. U-17131-R did not expressly reject DTE Gas's proposed cost allocation that is at issue here.  Moreover, the Commission further notes that the application of collateral estoppel in this case is consistent with the Commission's most recent decision on this issue in its May 11, 2017 order in Case No. U-17941.  For all of the foregoing reasons, the Commission finds that its earlier decision in Case No. U-17691 bars relitigation of this issue under the doctrine of collateral estoppel.  Additionally, the Commission acknowledges DTE Gas's argument that its gas supply decisions in this case reduced GCR costs by millions of dollars. Accordingly, the Commission rejects the proposed disallowance.

Parking Service Costs

The next issue the ALJ considered was the Attorney General's requested disallowance of $1,689,600 in costs related to storage deliverability parking service provided by a third party.  The Attorney General asserted that DTE Gas failed to provide any analysis with respect to its decision to purchase a firm parking service where the third-party service provider injected 4,840,000 Dth of gas into DTE Gas's gas system during the months of December 2014 to March 2015 at a rate of 40,000 Dth per day and where it withdrew this gas over the summer period from April 2015 to October 2015 at a daily rate of 22,617 Dth.  The Attorney General briefly summarized testimony where DTE Gas's witness Sherri Moore, Senior Gas Supply and Planning Analyst for DTE Gas, testified that the parking service allowed DTE Gas to maintain cycleable storage capacity of 71.9 billion cubic feet (Bcf) for both GCR customers and gas customer choice (GCC) customers by providing an additional 201 million cubic feet per day (MMcf/d) of gas storage deliverability.  He explained that DTE Gas did not show during direct testimony why this transaction was reasonable and prudent and did not present any analysis of other alternatives the company explored before entering into this costly arrangement. The Attorney General further asserted that, in rebuttal, Ms. Moore provided Exhibits A-20 and A-21 which provided some scenarios DTE Gas reviewed before purchasing the service, but that DTE Gas failed to provide any information to support the reasonableness and prudence of the program in its case-in-chief and did not explain why it failed to consider providing the service itself to its own customers. Thus, the Attorney General urged the Commission to disallow the $1,689,600 in costs related to this parking service.

In response to the Attorney General's arguments, DTE Gas presented Ms. Moore's rebuttal testimony in which she testified that the company did consider use of the additional storage capacity recallable through Midstream but rejected this option based on cost and risk. DTE Gas also disputed the Attorney General's claim that the company's analysis in Exhibit A-21 was only presented in rebuttal by presenting the direct testimony of Robert Lawshe, Manager of Gas Supply and Planning for DTE Gas, who explained that DTE Gas solicited bids for the parking service. 1 Tr 115.

The ALJ concluded that the Attorney General was not prejudiced by DTE Gas's presentation of its analysis in Exhibit A-21 in rebuttal as opposed to the company's case-in-chief. The ALJ pointed out that the Attorney General never claimed prejudice from the introduction of this analysis in rebuttal, did not seek to provide surrebuttal testimony, and was able to cross-examine Ms. Moore on Exhibit A-21 as well as to present additional information that DTE provided during discovery regarding this analysis in Exhibits AG-10 and AG-12. PFD, p. 36.

With respect to DTE Gas's option of recalling its own storage capacity leased to third parties through Midstream, the ALJ observed that the parties dispute the extent to which this storage capacity is recallable. *Id*. The ALJ considered the testimony of witness Barbara Goodwin, a Principal Analyst in Gas Supply and Planning for DTE Gas, in Case No. U-16921 and determined that this testimony alone did not fully summarize the Commission's orders on storage allocation. Thus, the ALJ reviewed relevant cases and determined that the 71.9 Bcf was intended to serve as a floor that could be revisited and revised in future cases. The ALJ also considered the testimony of Ms. Moore in this proceeding that DTE Gas rejected alternatives because they were more costly with greater price risk. The ALJ further observed that the Attorney General did not address this testimony in his briefs, and has not refuted DTE Gas's arguments based on this testimony. The ALJ reasoned that the Attorney General never disputed DTE Gas's assertion that the parking service expenditure was the result of competitive bidding. The ALJ also found significant the fact that the Attorney General never challenged DTE Gas's assertion that the use of storage is not cost free. The ALJ observed that DTE Gas's analysis, though flawed, took into account the impact additional use of storage would have on the GCR cost of gas as compared to the cost of storage parking service. She also noted that the proposed disallowance was premised on the belief that the availability of additional storage space alone would have solved the deliverability issue. Because the ALJ concluded that the Attorney General failed to challenge the substance of DTE Gas's analysis showing that the gas storage parking service would be less costly and involve less price risk than the alternative of purchasing additional gas to fill storage and displacing future purchases, the ALJ recommended that the Commission reject the Attorney General's proposed disallowance.

The Attorney General takes exception to the ALJ's recommendation, again arguing that DTE Gas failed to provide any support or analysis in its case-in-chief as to why the payment of $1,689,600 to a service provider for the injection of 4,840,000 Dth of gas into the utility's gas system is reasonable and prudent. The Attorney General also argues that the utility does not provide any analysis of what other alternatives it explored before entering into this transaction.

The Attorney General reiterates that DTE Gas should reserve a portion of the storage capacity and deliverability it has through its parking and loan service for its GCR and GCC customers before offering that service to others. In his exceptions, the Attorney General disagrees with the ALJ's finding that he did not show prejudice resulting from DTE Gas's failure to present any analysis or support for its parking storage decisions in its case-in-chief. He explains that it was prejudicial for DTE Gas to withhold evidence from its direct testimony that it claims in rebuttal supports a significant change to the approved GCR plan, because this prevents the Staff and any intervenor from effectively reviewing the evidence. He further argues that this lack of effective review of the evidence in turn prevents both the Commission and the ALJ from issuing a reasoned and fair determination based on all of the evidence in the record. The Attorney General disagrees with the ALJ's point that he could have sought, via a motion, surrebuttal testimony, because this ignores the short time limits between rebuttal and cross-examination. According to the Attorney General, it is difficult to prepare, schedule, and argue a motion for surrebuttal in a short timeframe and then prepare surrebuttal when discovery is also limited by this same short timeframe. Thus, he urges the Commission to find that DTE Gas failed to demonstrate the excess costs were reasonable and prudent. In the alternative, the Attorney General requests that the Commission at the very least warn DTE Gas against the practice of withholding important information in support of its application. The Attorney General also argues that the ALJ incorrectly placed the burden of proving the unreasonableness and imprudence of DTE Gas's parking storage transaction on the Attorney General instead of requiring DTE Gas to bear its burden of demonstrating that the additional $1.6 million in excess costs over the approved GCR plan was reasonable and prudent as case law requires. According to the Attorney General, the ALJ erred by concluding that there was evidence that DTE Gas acted unreasonably and imprudently in incurring the $1.6 million in costs, but that the Attorney General did not expressly challenge these actions in his brief. Because the Attorney General argues that this was an inaccurate application of the burden of proof and shows there was evidence on the record from which the Commission could find DTE Gas unreasonably and imprudently incurred costs for the parking service, he urges the Commission to reject the ALJ's recommendation and find DTE Gas failed to bear its burden of proving the reasonableness and prudence of the costs associated with the parking service.

DTE Gas replies that it did present evidence in its case-in-chief that supports the reasonableness and prudence of its costs incurred for parking service. Specifically, the utility quotes Mr. Lawshe's direct testimony that DTE Gas received bids for the parking service and selected the lowest cost service provider from the bids submitted. DTE Gas further argues, that, even if it could have provided more evidentiary support for the reasonableness and prudence of the costs incurred in its case-in-chief, the ALJ is correct that the Attorney General was not prejudiced by the utility's rebuttal testimony on this issue. The utility agrees with the ALJ's point that the Attorney General could have, but failed to, file a motion to strike the rebuttal testimony.

DTE Gas disagrees with the Attorney General's assertion that the Staff and any intervenors were prevented from effectively reviewing the evidentiary record on this issue, pointing out that the Staff and intervenors had five full months during which to conduct discovery before the filing of direct testimony and that they were not hindered from reviewing evidence. DTE Gas also points out that the Attorney General could have, but failed to, file surrebuttal testimony as the ALJ noted. In addition, the utility argues that, if the Attorney General needed more time to review rebuttal testimony, he could have moved to adjourn the case schedule. DTE Gas notes that it has no way of knowing all of the issues that intervenors will contest based on its application and when it files its direct testimony. Therefore, it cannot be expected to anticipate and respond to the issues that will be raised in briefing during its case-in-chief. It argues that the procedure in these cases allows for discovery, evidentiary hearings, rebuttal and motions for surrebuttal, and that, in this instance, the Attorney General simply failed to make his case. Finally, DTE Gas argues that it met its burden of proof when it presented the testimony of Mr. Lawshe and Ms. Moore regarding the analysis it used to determine whether the costs for the parking service were reasonable and prudent. DTE Gas argues it demonstrated that it chose the lowest risk and least cost alternative of any other option considered. Thus, it urges the Commission to reject the proposed disallowance.

The Commission, having considered the parties arguments, the evidentiary record, and the ALJ's findings and recommendations, agrees with the PFD and adopts the ALJ's findings and conclusions. More specifically, the Commission agrees with the ALJ that DTE Gas met its burden of proving the reasonableness and prudence of the incurred costs for parking service. The Commission finds that, contrary to the Attorney General's argument, DTE Gas did discuss how it arrived at its decision to purchase parking service in its case-in-chief by presenting the testimony of Mr. Lawshe regarding the bid process and the fact that DTE Gas went with the least cost service provider after a competitive bidding process. The Commission further finds that DTE Gas's evidence in its exhibits and rebuttal testimony establishes the reasonableness and prudence of its actions in incurring the costs for parking service. The Commission agrees with the ALJ that the Attorney General was not prejudiced by the use of rebuttal testimony and evidence regarding the parking service costs. The Commission further finds that, contrary to the Attorney General's assertion, the ALJ did not improperly shift the burden of proof onto the Attorney General to show that the costs incurred were unreasonable or imprudent. On the contrary, the ALJ found that DTE Gas met its evidentiary burden and that the Attorney General failed to dispute or call into question the utility's evidence showing the reasonableness and prudence of the utility's actions in incurring the parking service costs.  Accordingly, the Commission rejects the Attorney General's proposed disallowance.

THEREFORE, IT IS ORDERED that:

A. DTE Gas Company's application for a gas supply cost recovery reconciliation is approved as modified by this order.

B. DTE Gas Company shall reflect a net overrecovery, with interest, of $2,074,911 as its 2015-2016 gas cost recovery reconciliation beginning balance.

C. DTE Gas Company shall reflect a net overrecovery, with interest, of $792,885 as its 2015-2016 gas customer choice beginning balance.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, under MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General – Public Service Division at pungp1@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General – Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

Norman J. Saari, Commissioner

Rachael A. Eubanks, Commissioner

By its action of May 31, 2017.

Kavita Kale, Executive Secretary